Y.B. DR. NAWAWI MAT AWIN & ORS.

v.

SYED ALI MOHD. AL-ATTAS & ORS.

SUPREME COURT, KUALA LUMPUR
GEORGE SEAH SCJ
HASHIM YEOP SANI SCJ
WAN HAMZAH SCJ
[CIVIL APPEAL NO. 363 OF 1985]
8 JANUARY 1987

UNINCORPORATED ASSOCIATIONS: *Meetings - Right to adjourn meeting - Amendment of Constitution of society - Suspension of branch members - Whether Federal Committee has power to postpone the Johor Chamber's Annual General Meeting - Whether the power was properly exercised - Amendment to Article 26(2) of the Constitution - Whether valid - Suspension of the Johor Chamber - Whether valid.*

This was an appeal against the decision of the High Court Judge who held that

(a) the federal committee has no power to postpone the Johor chamber's annual general meeting of 14 August 1983.

(b) the amendment to Article 26(2) is not valid.

(c) the suspension of the Johor chamber in August 1983 was not valid.

This appeal arose from a dispute between the Malay chamber of commerce, Malaysia ("the Federal chamber") and its branch in the state of Johor ("the Johor chamber"). On 1 December 1981 the Johor chamber convened its 6th annual general meeting at Batu Pahat. This date and venue of the meeting were decided by the Johor chamber's outgoing committee at its meeting on 16 November 1981 and the notice convening the meeting was dated 12 November 1981. On 30 November 1981 the outgoing committee held another meeting where a large number of new applicants (182 in all) were admitted as members. According to evidence some of these new applicants had not even applied for membership when the applications were approved.

At the annual general meeting of the Johor chamber the status of the new members was questioned and there were rude remarks from some members. There was disorder at the meeting and a proposal for adjournment was made by the 1st respondent but the proposal was ignored. The 1st and 3rd respondents then walked out followed by some others. At that meeting the outgoing committee members were re-elected as office bearers for the period 1981/1982.

Following this incident, complaints were made to the Federal chamber and there was also a Court action against all the office bearers who were re-elected. The Federal Chamber at its meeting on 30 March 1982 suspended the Johor chamber and appointed the 4th appellant as director of operations to manage the Johor chamber.

On 26 February 1983 the Federal chamber amended its constitution by incorporating Article 26(2) barring reference to a Court of law of any dispute between the Federal chamber and its branches or members without the consent of the President and requiring such dispute to be referred to the President for his final decision. This amendment was passed at the meeting and subsequently approved by the Registrar of Societies.

The Federal committee at its meeting on 12 August 1983 postponed the annual general meeting of the Johor chamber convened for 14 August 1983 and notification of the postponement was done through newspapers published on the day of the meeting and a notice of the postponement was posted at the door of the Johor chamber. However about 100 members gathered as scheduled on 14 August 1983 and elected a new chairman and continued the meeting for the purpose of transacting the business in the agenda.

The suit in the High Court was taken out by the 3 respondents as members of the Johor chamber asking for a number of declarations. The appellants appealed against the judgement of the learned Judge.

Held:

[1] The Federal committee was the appropriate authority to postpone the meeting and the postponement was therefore a lawful and authorised postponement because at that time the Federal committee was carrying out the duties and functions relating to the Johor chamber under the constitution.

[2] The power of postponement was properly exercised by the Federal committee because there was the dissatisfaction of certain members over the 182 new members, the injunction obtained involving the Johor Bahru annual general meeting and the possible embarrassment to the Menteri Besar of Johor who was to declare open the annual general meeting.

[3] The suspension of the Johor chamber was valid because the power was clearly stated in Article 8(6)(g) of the old constitution.

[4] The omission to notify the Johor chamber as to the amendment of the constitution by the insertion of Article 26(2) was fatal because during the period of suspension, notices were sent to members on various occasions for other purposes and therefore it cannot be said that the same could not be done for the purpose of Article 18(2) as well. The amendment to Article 26(2) is therefore not valid.

[Appeal dismissed. No order as to costs here and below. Liberty to apply for consequential orders.]

Cases referred to:

Tan Kah Wich & Ors. v. Datuk Phua Cheng Leong & Ors. [1979] 2 MLJ 259
Chooa E. Pek & Ors. v. Un Siang Mead & Ors. [1983] CLJ (Rep) 97
Sharma Lal Chand v. Ghan Syam Rai [1980] 1 MLJ 56

Legislation referred to:

Federal Constitution, arts. 8(6)(g), (q), 18(1), (2), 26(2)

For the appellants-Wong Chong Wah (Zainuddin Ismail with him); M/s. Tunku Zuhri, Manan & Abdullah
For the respondents-Raja Aziz Addruse (Reginald Vallipuram with him); M/s. Reginald Vallipuram & Co.

JUDGMENT

Hashim Yeop Sani SCJ:

This appeal arose from a dispute between the Malay chamber of commerce, Malaysia and its branch in the state of Johor, that is the Johor Malay chamber of commerce. In this judgment the former will hereinafter be referred to as the "Federal Chamber" and the latter as the "Johor Chamber"

The suit in the High Court was taken out by the three respondents as members of the Johor Chamber. They asked for a number of declarations the main ones being:

(1) a declaration that the persons elected as office bearers of the executive committee of the Johor Chamber by the meeting held on 14 August, 1983, were validly elected;

(2) a declaration that 182 persons purported to have been accepted as members of the Johor Chamber by the executive committee in office immediately prior to 1 December 1981 were not qualified to be members and that their names be removed from the register of members of the Johor Chamber;

(3) a declaration that the purported suspension of the Johor Chamber by the notice appearing in the newspapers on 20 August 1983 is invalid and null and void and of no effect;

(4) a declaration that the amendment to the bye-laws purportedly made at the general meeting of the Federal Chamber to prohibit disputes from being adjudicated in the High Courts without prior consent of the president of the Federal Chamber is null and void and of no effect.

Fortunately for all concerned in the course of the trial the parties agreed that the dispute be confined to five issues as enumerated by the learned Judge (at p. 16) as follows:

1) (a) Whether the Federal committee has the power to postpone the Johor Chamber's annual general meeting of 14 August 1983;

   (b) If so whether the power was properly exercised;

2) Whether the amendment to Article 26(2) is valid;

3) Whether Article 26(2) outsed the jurisdiction of the Court and therefore null and void;

4) Whether the plaintiffs can maintain this action in view of Article 26(2) and

5) Whether the suspension of the Johor Chamber in August 1983 was valid.

At the conclusion of the hearing in a reserved judgement the learned Judge answered the first issue in the negative. His answer to the second issue was also in the negative (p. 24) for the reasons given. He declined to decide on the third and fourth issues. His answer to the fifth issue was also in the negative as it was consequential upon his answer to the first issue (p. 24).

To get a proper perspective of the dispute it is necessary first of all to know the background facts. Briefly they are as follows. On 1 December 1981 the Johor Chamber convened its sixth annual general meeting at Batu Pahat. Although it was not really relevant to the issues the learned Judge did refer to the manner in which the meeting was convened which could perhaps have indirectly contributed to the dispute. The date and venue of the meeting were decided by the Johor Chamber's outgoing committee at its meeting on 16 November 1981. However the notice convening the meeting was dated 12 November 1981 apparently to circumvent the requirement of 14 days' notice as prescribed by the constitution. On 30 November 1981 the outgoing committee held another meeting where a large number of new applicants (182 in all) were admitted as members and this happened just one day before the annual general meeting scheduled at Batu Pahat. According to the evidence before the learned Judge some of these new applicants had not even applied for membership when the applications were approved.

At the annual general meeting of the Johor Chamber questions were asked about the status of the new members and there were rude remarks from some members. There was disorder at the meeting and a proposal for adjournment was made by the first respondent supported by the third respondent but the proposal was ignored. Both respondents then walked out of the meeting followed by some others. At that meeting the outgoing committee members were re-elected as office bearers for the period 1981/1982. Following this incident there were complaints made to the Federal Chamber and there was also a Court action against all the office bearers who were re-elected.

As a result of the foregoing incidents the Federal Chamber at its meeting on 30 March 1982 suspended the Johor Chamber and appointed the fourth appellant as director of operations to manage the Johor Chamber.

On 26 February 1983 the Federal Chamber amended its constitution by incorporating Article 26(2) barring reference to a Court of law of any dispute between the Federal Chamber and its branches or members without the consent of the president and requiring such dispute to be referred to the president for his final decision. This amendment was passed at the meeting and subsequently approved by the Registrar of Societies.

As can be observed there are many side issues involved which do not presently require a determination.

The issues agreed to by the parties in the course of the trial can in fact be classified into two main issues namely-

(1) the first and fifth issues which are concerned with the powers of the Federal Chamber;

(2) the second, third and fourth issues which are concerned with the validity (or invalidity) of the new Article 26(2) of the constitution of the Federal Chamber.

The validity of Article 26(2) may be viewed either from (a) the point of procedure or (b) the nature of its content.

In our view the answer to question (1)(a) can easily be found in the constitution of the Federal Chamber. There are two cnstitutions of the Federal Chamber involved. One was the Constitution applicable at the time of the suspension (the old Constitution) and the other is the constitution applicable at the time when the annual general meeting of 14 August 1983 was convened (the new constitution).

Article 8(6)(g) of the old Constitution reads as follows:

> Menyelesaikan perselisehan yang berbangkit dalam dewan dan jika perlu, menggantung atau membubar mana-mana Jawatankuasa cawangan atau memberhentikan mana-mana ahli.

English translation:

> To settle disputes that arise in the Federal Chamber and if necessary to suspend or dissolve any branch committee or terminate the membership of any member.

There is no doubt that this provision clearly empowered the Federal Chamber to suspend the Johor committee. Then there is Article 8(6)(q) of the new constitution which reads as follows:

> Menjalankan atau melaksanakan apa-apa kegiatan tugas atau kuasa mengenai sesuatu Jawatankuasa cawangan atau cawangan Negeri apabila Jawatankuasa Cawangan atau Cawangan Negeri itu digantung atau dibubarkan.

English translation:

> To carry out or to execute any activity or power of a branch committee or state committee when the branch or state committee concerned is suspended or dissolved.

This provision also clearly empowers the Federal Committee to carry out the functions of the Johor committee when the latter is under suspension. This provision was not found in the old constitution.

It is in evidence that the Federal committee at its meeting on 12 August 1983 postponed the annual general meeting of the Johor Chamber convened for 14 August 1983. It was argued on behalf of the respondents and agreed to by the learned Judge that Article 8(6)(q) of the constitution is not a specific provision empowering the Federal Committee to postpone the annual general meeting of the Johor Chamber. Any postponement of the meeting in the absence of a specific provision could only be done in the exercise of the right vested in the meeting itself following the position at common law - *Tan Kah Wich & Ors v. Datuk Phua Cheng Leong & Ors.* [1979] 2 MLJ 259. Thus it was argued firstly that the right to adjourn the meeting at common law is vested in the meeting itself. Secondly the only instance where the chairman has the right to adjourn the meeting is when the power of adjournment is expressly vested in the chairman by regulations or when the chairman adjourns on his own authority to facilitate the business of the meeting, for example to take poll, or in the case of persistent disorder when the chairman is empowered to adjourn the meeting for a short period. Therefore it was argued that the onus is on the appellants to show the existence of an express provision in the constitution or regulations and since there is no such provision the adjournment by the Federal committee was null and void and the members who gathered as scheduled on 14 August 1983 had the right to elect a new chairman and to continue the meeting for the purpose of transacting the business in the agenda. *Chooa E Pek & Ors v. Un Siang Mead & Ors.* [1983] CLJ (Rep) 97 was also cited as authority on the power of a chairman to adjourn a meeting if the meeting becomes unruly and unmanageable.

What was overlooked in this argument was that the authorities cited would apply only if the meeting is a lawful meeting. We are of the view that this is not the case here. The Federal committee was at that time carrying out the duties and functions relating to the Johor Chamber under the constitution since the Johor committee was suspended. In our view the Federal committee which postponed the meeting had the power to do so and it was in fact the proper authority to exercise the power. In *Sharma Lal Chand v. Ghan Syam Rai* [1980] 1 MLJ 56 the association was run by a management committee and it was held that the honorary secretary had no right to postpone the meeting. In the present case the Federal committee was the appropriate authority to postpone the meeting and the postponement was therefore a lawful and authorised postponement.

Due to insufficient time it was not possible to notify every member in writing of the postponement. After the Federal committee decided to postpone the annual general meeting notification of the postponement was done through the newspapers published on the day of the meeting. Apart from the notification in the newspapers of the day a notice of the postponement was also posted at the door of the Johor Chamber. Despite all this some members went to the venue of the scheduled meeting. It was not disputed that about 100 members were present the majority of them from Johor Bahru who had ignored the notice of the postponement. About 200 members did not however turn up for the meeting. Thus we have no doubt that the postponement by the Federal committee was lawful and it was the meeting attended by the 100 members in defiance of the postponement that was unlawful.

As regards the subsidary issue whether the power was properly exercised by the Federal committee it is evident from the testimony of the witnesses that there were good and sufficient reasons for the Federal committee to postpone the annual general meeting. There were three reasons disclosed in evidence. Firstly there was the dissatisfaction of certain members on the 182 new members. Apparently notices had been sent out to 65 members of the 182 new members. Secondly there was information that certain Johor Chamber members had obtained an injunction involving the Johor Bahru annual general meeting. Thirdly since the Menteri Besar of Johor had been invited to declare open the annual general meeting the Federal committee felt that embarrassment would be caused to him if undesirable incidents occur at the meeting. The words "chaos" and "huru hara" were used by several witnesses - see evidence of DW2 and DW3, Volume 1 Part B, p. 80, p. 98. We would therefore hold that the decision to postpone the annual general meeting was properly exercised by the Federal committee and was made in good faith.

To answer the issue involving the amendment of the constitution by the insertion of Article 26(2) it is necessary to trace step by step what happened before the amendment was made.

Firstly Article 18 of the old constitution of the Federal chamber provides for the procedure for amendment to the constitution. Article 18(2) of the constitution states:-

> Ketetapan hendak meminda Perlembagaan hendaklah dihantar kepada tiap-tiap cawangan Negeri 30 hari sebelum tarikh Meshuarat Agung yang ditetapkan. Segala pindaan itu tidak boleh dijalankan kuatkuasanya sebelum diluluskan oleh Pendaftar Pertubuhan.

English translation:

> A resolution to amend the constitution shall be conveyed to every state branch thirty days before the date of the General Meeting. All amendments shall not have effect prior to approval by the Registrar of Societies.

The complaint here was that the amendment was passed without any notice given to the Johor chamber or any of its members. Secondly there was no representative of the Johor chamber present at the meeting in which the amendment was passed.

The object of Article 18(2) of the old constitution is to enable the decision to amend the constitution be made known to every branch at least 30 days before the annual general meeting at which the amendment is to be passed. At the amending stage there must be at least two-thirds majority present at the meeting vide Article 18(1). It is obvious that the object of the provision is to enable the substance of the amendment to be made known to the branch members who have the right to discuss, oppose or pass the amendment at the meeting.

It was argued on behalf of the appellants that at the time in question the Johor committee was in suspension and therefore Article 18(2) could not be implemented. But there were occasions where notices were in fact sent to members of the Johor Chamber e.g. the calling of the meeting in Pontian and again in Kota Tinggi. In his capacity as director of operations the fourth appellant could send out these notices. The first notice of the annual general meeting sent by him was dated 17 July 1982 calling for the annual geral meeting to be held at Pontian - Vol. 4, p. 20. The second notice dated 27 August 1982 was for the annual general meeting on 19 September 1982 at Kota Tinggi. This notice can be found in Vol. 4, p. 22. At the Kota Tinggi annual general meeting there was quorum but no election of office bearers. The third notice was dated 18 July 1983 and this was in relation to the annual general meeting on 14 August 1983 at Johor Bahru. Copy of this notice to be found in Vol. 2, pp. 44-47. All these notices were sent to the members and therefore it cannot be said that the same could

not be done for the purpose of Article 18(2) as well. The learned Judge dealt with this question at some length in his judgment (p. 21-22). After dealing with the evidence the learned Judge considered the omission to notify the Johor Chamber as fatal. We respectfully agree with him. Our answer to the second issue is also in the negative.

The learned Judge declined to decide on the third and fourth issues because he considered that the matters did not arise because of his answer to the second issue. We agree that the third and fourth issues need not be answered because they are academic in the circumstances. The fifth issue has been answered in the positive.

The appeal is accordingly dismissed.

The Federal Chamber had appealed against the judgment of the learned Judge because all the three questions are answered by him were in the negative whereas in this judgment three of the four questions are answered in the positive in favour of the appellants except on the question of the invalidity of the amended Article 26(2) of the constitution. In the circumstances it has now been agreed to by the parties that there will be no order as to costs here and below.

Liberty to apply for consequential orders. Deposit to be refunded to appellants.

Order accordingly.

Also found at [1987] 2 CLJ 29

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